

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

Paper No. 14  
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Domain Logix, Inc.

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Serial No. 75/867,516  
Serial No. 75/867,517

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Robert A. Voigt, Jr. of Winstead Sechrest & Minick P.C. for  
Domain Logix, Inc.

LaVerne T. Thompson, Trademark Examining Attorney, Law  
Office 116 (Meryl Hershkowitz, Managing Attorney).

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Before Sams, Cissel and Bottorff, Administrative Trademark  
Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant has appealed from the Trademark Examining  
Attorney's final refusals, in the above-referenced  
applications, to register the marks VIRTUAL PORTAL<sup>1</sup> and

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<sup>1</sup> Serial No. 75/867,516, filed December 9, 1999.

VIRTUAL DATA PORTAL<sup>2</sup> for goods identified, in both applications, as "computer software used to enable a web-browser-like interface for providing remote control via a global or local computer network for supporting monitoring station components of manufacturing processes within a user factory." The ground of refusal in each application is mere descriptiveness under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). We shall decide both of applicant's appeals in this single decision.

An initial evidentiary matter requires consideration. Applicant, for the first time with its appeal brief, submitted a listing from the Office's TESS database of third-party applications (both "live" and "dead") for registration of marks which include the word VIRTUAL, or the word DATA, or the word PORTAL, in connection with Class 9 software products. In her brief, the Trademark Examining Attorney properly objected to this evidence on the ground of untimeliness. We sustain the objection, and have given these materials no consideration. See Trademark Rule 2.142(d).

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<sup>2</sup> Serial No. 75/867,517, filed December 9, 1999.

We also note by way of background that, in response to the Trademark Examining Attorney's request, applicant provided the following information regarding its goods:

Applicant's software, in part, as indicated by the attachments [printouts from applicant's website] is used to facilitate manufacturing processes such as in the semiconductor industry. Applicant's software may allow a user to control and monitor various tools, e.g., test chamber, in the factory. Each tool may be described in terms of an 'object' in reference to the object oriented language. By describing each tool as an object, various characteristics of the tool may be monitored and controlled such as temperature, pressure and status, by the software. By controlling and monitoring the tools through the software, a user may not have to be physically located on the factory floor to monitor or control the tool.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one

significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Finally, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corporation*, 226 USPQ 365, 366 (TTAB 1985).

Applying these principles in the present case in light of the evidence of record, we find that VIRTUAL PORTAL and VIRTUAL DATA PORTAL, the marks applicant seeks to register, are merely descriptive of a significant feature or function of applicant's software, i.e., of the "web-browser-like interface" which the software enables. The marks immediately convey the information that the software enables a computer-simulated or computer-generated portal

interface by which the user may access data from the factory floor in order to monitor and control the manufacturing process.

The evidence of record shows that, in the context of computer technology, the word "virtual" means "simulated: especially simulated by electronic technology." High Tech Dictionary.<sup>3</sup> See also *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1526 (TTAB 2001) ("...the term 'virtual,' when used in connection with computers and related goods and services, means that someone at a computer is able to encounter certain things in a non-physical or 'virtual' manner"). That the word might have other connotations in the other (non-computer) contexts cited by applicant is not controlling. *In re Bright-Crest, Ltd.*, *supra*.<sup>4</sup>

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<sup>3</sup> The URL for this online dictionary as it appears on the printout made of record by the Trademark Examining Attorney is [www.computeruser.com/resources/dictionary/definition](http://www.computeruser.com/resources/dictionary/definition). The complete definition is: **virtual:** 1.(Older meaning, before computer era) Being so in essence or effect although not officially recognized (for example, a virtual paradise, meaning a place on Earth that is really like Paradise). 2.(New meaning created by computer technology) Simulated: especially simulated by electronic technology (for example, a virtual paradise, meaning a computer simulation of Paradise, perhaps in a virtual reality or 3-D gaming space).

<sup>4</sup> Also, applicant quotes from (but has not attached a copy of) another online dictionary definition of "virtual" which states that the term is "a prefix to 'virtually' any electronic concept or product without regard to the original meaning of the term." (TechEncyclopedia [[www.techweb.com/encyclopedia](http://www.techweb.com/encyclopedia)]). Applicant argues that this definition establishes that "virtual" is "a superfluous prefix" and an "unnecessary, meaningless adjective" and that it therefore is not merely descriptive

The Trademark Examining Attorney also made of record the following definition from High Tech Dictionary of the word "**portal**": "1. A gateway or entrance. 2. a gateway to the Internet, which may be a search engine or directory web page. Examples: Infoseek, Excite, Yahoo, Lycos, AOL. A web page which is a starting point for web surfing."<sup>5</sup>

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as it appears in applicant's marks and as applied to applicant's goods. We are not persuaded. The TechEncyclopedia online dictionary definition from which applicant quotes appears to be derived from the Computer Desktop Encyclopedia (9<sup>th</sup> ed. 2001) published by McGraw-Hill. That publication's complete entry for "virtual," of which we take judicial notice, is:

An adjective that expresses a condition without boundaries or constraints. It is often used to define a feature or state that is simulated in some fashion. For example, one of the first uses of the term was for "virtual memory," in which memory is saved to disk and swapped back and forth as needed, thus memory is essentially "simulated on disk."

However, the term has become such a fashionable computer word that it may be a prefix to "virtually" any electronic or Internet-related concept or product without regard to the original meaning of the term.

That the word might be used in various ways and with various meanings in connection with computers, computer software and computer networks does not mean that the term no longer has a merely descriptive meaning as applied to such goods, nor that it has become an inherently distinctive term for purposes of trademark law.

<sup>5</sup> [www.computeruser.com/resources/dictionary/definition]. Regarding the word "gateway" which appears in this definition of "portal," applicant in its brief cites to and quotes (but does not submit a copy of) the following definition of "gateway" from Webster's New World Dictionary of Computer Terms (7<sup>th</sup> ed. 1999): "a means by which users of one computer service or network can access certain kinds of information on a different service or network; [also,] a device that connects two dissimilar local area networks (LANs) or connects a local area network to a wide-area network (WAN)." We reject as inapposite and unpersuasive

Applicant, in its responses to Office actions and in its brief, quotes from (but does not attach copies of) the following similar definitions of "portal": "a page on the Web that attempts to provide an attractive starting point for Web sessions; examples include Yahoo and Netscape's NetCenter" (Webster's New World Dictionary of Computer Terms (7<sup>th</sup> ed. 1999)); and "a web 'supersite' that provides a variety of services including web searching, news, white and yellow pages directories, free e-mail, discussion groups, online shopping and links to other sites" (TechEncyclopedia [www.techweb.com/encyclopedia]).

Based on these dictionary definitions of "portal," applicant argues that the term "may be defined as" a general-purpose Web site such as Yahoo and NetCenter through which computer users may access the Internet, and that because applicant's software does not pertain to or involve such a Web "supersite" or portal, the word "portal" is not merely descriptive as applied to applicant's software. However, we are not persuaded that "portal" is as narrowly defined as applicant argues.

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applicant's argument that because applicant's software does not perform these specific "gateway" functions and thus does not serve as a "gateway," the word "portal" is not merely descriptive of applicant's software.

Although Web supersites like Yahoo are general portals which serve as access points to the general Internet, the record also shows that a "portal" can be any interface between the user and specific types or sources of data, including proprietary, intra-company data. For example, a "corporate portal" is:<sup>6</sup>

An internal Web site (intranet) that provides proprietary, enterprise-wide information to company employees, as well as access to selected public Web sites and vertical-market Web sites (suppliers, vendors, etc.) It includes a search engine for internal documents and the ability to customize the portal page for different user groups and individuals. It is the internal equivalent of the general-purpose portal on the Web.

The NEXIS evidence submitted by the Trademark Examining Attorney likewise demonstrates descriptive usage of "portal" to refer to user/data interfaces in contexts other than Yahoo-like Web supersites:

HEADLINE: What's your company policy on portals?  
BODY: ...one that goes beyond buttons and menus) to directly support personalised information delivery. This is not easy to achieve but, once achieved, it is very easy to sell. A defining characteristic of a workspace portal is that it sells itself. Given a choice between a workspace portal and a conventional

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<sup>6</sup> McGraw-Hill Computer Desktop Encyclopedia (9<sup>th</sup> ed. 2001) (from which the TechEncyclopedia definition of "portal" quoted by applicant appears to be derived; see *supra* at footnote 4).



GUI or web browser interface, choosing the portal will be a 'no brain' decision.

- Telecommunications; International Edition (October 2000);

...specific needs, instead providing generic information that may or may not have been relevant to the receiver. By contrast, the Internet makes the information readily available, and allows it to be tailored to individual needs. Each employee can receive real-time customized management information through a web browser, any time, anywhere. These personal portals effectively provide a single and instant picture and create a fundamental change by allowing every member of the company to manage their own performance against clear, organization-wide strategic priorities.

- Corporate Finance (September 2000); and

For the first time an infrastructure is available through which managers at all levels within the bank can receive information within time frames that will allow them successfully to act and influence future performance. System architectures (available from leading vendors) now integrate web browsers and portals fed from internal data warehouses, operational systems and external data feeds, giving managers online access to the complete range of information necessary to understand their operating performance.

- The Banker (July 1, 2000).

The NEXIS evidence also shows that there is a class of software known as "portal software," the function of which is to enable a portal interface between users and the data they need to access:

In addition, eMation's client-side portal software includes interfaces to enterprise

systems such as billing, help desk, inventory and asset management.

- Network World (October 15, 2001);

Orion's Concerto medical applications portal software - which Hutt Valley is laying over Orion's soprano applications such as discharge summaries - provides single log-in access to multiple hospital information systems.

- Infotech Weekly (October 15, 2001);

GE Medical last week also partnered with Corechange Inc. to integrate Corechange's Coreport portal software into hospital systems. The goal is to create a single sign-on system that manages doctor, nurse, and clinician access to private patient records.

- Informationweek (October 1, 2001);

...plans to have the portal in full production by 2004. IT services vendor EDS late last month won a \$9 million, seven-month contract to help design and run the portal pilot. EDS will host the system, using Computer Associates' Jasmine portal software. EDS is performing the portal work in conjunction with its ongoing contract to build and operate the Navy Marine Corps Intranet, an IP converged network that will support voice, video and data.

- InternetWeek (October 8, 2001);

Instead of using only Microsoft's Windows operating system to get company information, software makers are promoting "portal" software that works with a Web browser to let workers get often-used data through any device.

Armonk, N.Y.-based IBM said its product will offer more capabilities in an out-of-the-box, general-purpose portal.

- Los Angeles Times (December 28, 2000); and

In January, the county rolled out a data warehouse and data mart that can give researchers and agency officials detailed reports via a Web browser. With portal software from Viador as its front end, the

system is replacing a variety of green-screen legacy systems.

- Infoworld (November 22, 1999).

Based on this evidence, we find that applicant's software, the stated function of which is to enable an interface by which users may access factory floor data, is portal software. The word PORTAL in applicant's marks immediately conveys the fact that the "interface" enabled by applicant's software is a portal interface. Applicant's argument that "portal" has no descriptive significance and is inherently distinctive as applied to applicant's software simply is not persuasive.

The evidence of record also establishes that "data portal" is simply a portal by or through which data, of whatever type, is accessed and/or delivered.

The first e-business strategy leverages the company's own Internet capabilities and content-rich Web site. Web sites such as Avnet's link customers, suppliers, other stakeholders, and employees, and are used to present information, handle sales transactions, and provide customer service; intranets and enterprise data portals link employees and give them more access to data; and extranets improve information flow among business partners.

- Electronic News (May 15, 2000);

Headline: Proof of portals - eWEEK labs cuts through the portal confusion to determine how and how well portals manage corporate knowledge  
Body: Companies looking at portals will have to clearly define the benefits of the easy

access to organized data that portals can bring.

- eWEEK (May 15, 2000);

A new data portal model is also emerging as companies increasingly utilize the Internet to exchange multi-formatted business data. San Diego-based bTrade offers data transformation as part of its standard transport offering for a flat monthly fee of \$90. bTrade customers download a free data portal client over the Web that supports data transformation...

- Electronic Commerce World (April 2000);

If the trial is successful, the company's subscribers will have access to GiantBear.com's custom local and national content, e-commerce services and alerts from their wireless devices. "The team at GiantBear will be our data portal providers as well as our partners in delivering a uniquely customized data product to our customers, whether it's the local ski report in Lake Placid or where the fish are biting in Minnesota," said Richard Ekstrand, president and chief executive officer of RCC.

- Radio.comm Report (May 8, 2000);

Crane said he hoped the merger would help create a comprehensive data portal. In the same way that money market funds have been increasingly sold in fund supermarkets rather than as stand-alones, iMoneyNet will provide IBC's fund tracking services along with a variety of other capabilities on the Web, Crane said.

- The Bond Buyer (April 8, 2000);

UPM, Jproxyma, Web Projector, and Model Wiz exhibit great synergy and provide a powerful end-to-end solution for several existing and about-to-explode markets such as the emerging Internet appliances and wireless data portal markets.

- Online Product News (April 2000); and

...need or want directly to your desktop in the form of a customizable news ticker. But rather than relying on advertising to support the product, DigiPortal charges a one-time \$34.95 fee for the software, and you select only the information that's important to you. There are no ads, banners, or required data portals.  
- Computer Shopper (February 1, 2000).

The portal interface enabled by applicant's software is a data portal, i.e., a portal which provides the user with access to data from the factory floor. As applied to applicant's goods, PORTAL and DATA PORTAL have essentially the same meaning, and they both merely describe a feature of the software, i.e., that it enables an interface by which the user may access targeted data.

Applicant's marks VIRTUAL PORTAL and VIRTUAL DATA PORTAL simply combine the merely descriptive word VIRTUAL with the merely descriptive terms PORTAL and DATA PORTAL. We are not persuaded by applicant's contention that the merely descriptive significance of any of these terms is negated or lessened by virtue of such combination, or that such combination results in a coined, arbitrary, incongruous or otherwise inherently distinctive composite. VIRTUAL PORTAL and VIRTUAL DATA PORTAL are not terms that were coined by applicant; the NEXIS and Internet evidence of record shows numerous prior uses by others of these

terms in a merely descriptive manner, as in the following examples (emphasis added):

...UCAR's [University Corporation for Atmospheric Research] integrated data management plan occurs in a context of significant efforts by other organizations to provide portals, catalogs, and gateways to environmental and atmospheric data resources... A fundamental issue is how UCAR should interface with these other efforts. Two extreme approaches would be... The first extreme would standardize access to UCAR's diverse data assets and services by creating a single UCAR format and **virtual data portal**, independent of discipline boundaries or user requirements, making it possible to monitor usage, standardize protocols, and enforce metadata standards and policies on an institution-wide basis.  
- [www.cgd.ucar.edu/dmwg/strategic.plan.html](http://www.cgd.ucar.edu/dmwg/strategic.plan.html);

Welcome to the Clark County, Indiana GenWeb site: Your **virtual portal** to family history research resources for Clark County, IN, created in 1801... In June 1996, a group of genealogists organized the Indiana Comprehensive Genealogy Database. The idea was to provide a single entry point for all counties in Indiana, where collected databases would be stored...  
- [www.rootsweb.com/~inclark/](http://www.rootsweb.com/~inclark/);

United Youth Conference **Virtual Portal**:  
Welcome to the **Virtual Portal** for participating in the first United Youth Conference, which is bringing key youth leaders from 30 countries to design a plan of action to empower and give a voice to young people (July 20-26)... This is your opportunity to participate in this event, even though you are unable to be there in person. What we are working on relies fully on the contributions of young people like you from every corner of the world.  
- <http://www.oneday.org/uyc/virtual.htm>;

Headline: SiteMinder 4.0 from Netegrity now available

Body: Enhancements over the previous version include **virtual portal** technology to manage e-commerce affiliate partners, portal users' entire lifecycle management and new password administration services. The solution also includes delegated portal administration and self-registration.

- Internet Business News (April 14, 2000);

The association's site also houses Small Business Connections, a **virtual portal** to the Web sites of Office Depot, Preview Travel, the Microsoft Network, and other companies that provide products, services, and information to small businesses.

- Card Marketing (April 2000);

IdNET proposes an independent agent's **virtual portal** and a network of individual independent agency Web sites that would offer a 24-hour-a-day, 7-day-a-week customer service, and business and personal financial services. The portal would also offer insurance and special national insurance coverage programs. The Web sites, however, would be more than online agency...

- Rough Notes (April 2000);

The company made a couple of announcements, including one that it has developed new technology for securing and managing affiliate networks. The technology will allow companies to link affiliates together in what the company says is a "**virtual portal**" to provide a unified set of services to customers.

- TheStreet.com (February 29, 2000);

"...sectors worldwide that will telecommunicate or hold a Web meeting between sectors, hold a Netmeeting and videoconference and exchange documentation in real time," Marshall said. The promise of cost savings, the ability to meet in real time and the access to unlimited resources worldwide will drive the **virtual portals**. ...The site allows companies to conduct

e-business with customers as a secure Web portal to communicate key...

- Washington Technology (February 21, 2000);

Through an Internet storefront, e-commerce provides your customers with a **virtual portal** to your company, enabling them to check availability of products or services, place orders, receive order acknowledgment, receive shipping advice, track order status, receive billing, make payment and retain transaction records.

- Business Credit (November 1, 1999);

Vortals, or **virtual portals**, are becoming more popular, and have promise as source of technical, business and professional information.

- Online Magazine (March 2000);

The company, which has 100 million square feet of mall space with 13,000 stores around the country, is in the process of turning a new Web site into a **virtual portal** for the physical mall, according to Bucksbaum.

- Chicago Tribune (December 8, 1999);

Headline: New Web portals putting government just a click away...

Body: Can Internet users look forward to having easy access to government services, much as they might buy a book online? More and more, the answer seems to be yes. Just like e-commerce, the **virtual portals** of e-government are open 24 hours a day, 365 days a year at all levels - federal, state and local.

- The Atlanta Journal and Constitution (November 10, 1999);

...activists a Linux-based application for organizing, creating customizable listservs and cheap Web sites, mentoring, applying for grants, even finding pro bono attorneys to help build a strong online civil rights community. But not everyone approves of Goldman's **virtual portal** of online hate - or his defense of bigots' free-speech rights. Militant anti-hate



groups have spoken out against his 'education-first' approach. One, Anti-Racist Action (ARA) of Montreal, even temporarily delinked Hatewatch.org in protest.

- The Village Voice (November 2, 1999); and

In addition, we shall be using a portion of the proceeds to complete the development of our heavy metal **virtual portal**, which will be launched in spring 2000 and which we consider will provide a significant new revenue stream for the Group.

- The Regulatory News Service (November 1, 1999);

This evidence belies applicant's contention that VIRTUAL PORTAL and VIRTUAL DATA PORTAL are unique or fanciful composite terms. They are as merely descriptive when considered in the composite as the individual terms are when considered separately. That applicant might be the first to use the composite term in applicant's particular field is not dispositive. The feature of applicant's software which VIRTUAL PORTAL and VIRTUAL DATA PORTAL merely describe is the "interface" enabled by the software, not the specific type or field of data which the interface allows the user to access.

In summary, based on the evidence of record and for the reasons discussed above, we find that the marks applicant seeks to register in these applications, i.e., VIRTUAL PORTAL and VIRTUAL DATA PORTAL, are merely descriptive as applied to the goods identified in each

**Ser. Nos. 75/867,516 and 75/867,517**

application, and that they therefore are unregistrable under Trademark Act Section 2(e)(1). We have carefully considered all of applicant's arguments to the contrary, including any arguments not specifically discussed in this opinion, and find them to be unpersuasive of a different result.

Decision: The refusal to register in each of the applications involved in this appeal (Serial Nos. 75/867,516 and 75/867,517) is affirmed.